

FILED

NOV 28 2017

Ed Smith

CLERK OF THE SUPREME COURT

STATE OF MONTANA

Ed Smith

Case Number: AC 17-0694

CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

IN RE ASBESTOS LITIGATION,

Consolidated Cases.

Cause No. AC 17-0694

ORDER ESTABLISHING
THE ASBESTOS CLAIMS COURT
AND CONSOLIDATING CASES

In the aftermath of the W.R. Grace federal bankruptcy proceedings, the Court Administrator for the State of Montana Judicial Branch has identified at least 540 pending asbestos claim cases in the district courts. Considering that and other circumstances, this Court has determined there exists sufficient need to implement the provisions of the Asbestos Claims Court Act codified at §§ 3-20-101 through -105, MCA. In particular, the Court has considered the need of all parties to have asbestos-related claims timely resolved, the extraordinary complexity and cost of these cases, and the enormous detrimental impact on the resources of Montana district courts if required to litigate these cases on an individual basis.

ACCORDINGLY, THE COURT HEREBY ESTABLISHES THE ASBESTOS CLAIMS COURT. District Court Judge Amy Eddy is appointed as the Asbestos Claims Judge, for purposes of pretrial proceedings only. The Court Administrator will appoint a Clerk for the Asbestos Claims Court.

Filing through Montana Courts E-Filing is mandatory for all filings with the Asbestos Claims Court. Filings in this matter will be facilitated by the case management system of the Clerk of the Montana Supreme Court. All filings with the Asbestos Claims Court are considered filings in a separate court and are to be accessed through and maintained by the Clerk of the Asbestos Claims Court and the office of Court Administrator, and are not part of the Montana Supreme Court caseload or the responsibility of the Clerk of the Montana Supreme Court, although the file stamp of that office will display on documents.

Pursuant to the authority granted by the Asbestos Claims Court Act and M. R. Civ. P. 42, the cases involving asbestos-related claims identified on Exhibit A

attached hereto are hereby consolidated into the above-captioned matter for pretrial purposes only. As consolidation is for pretrial purposes only, no right of judicial substitution exists under § 3-1-804, MCA. Should any individual case ultimately proceed to trial, it will be tried in the county and before the district court having jurisdiction at the time of consolidation, unless the Legislature fully funds the operation of the Asbestos Claims Court. If the Asbestos Claims Court is fully funded by the Legislature, then all provisions of the Asbestos Claims Court Act may be implemented at that time.

Within 30 days of the date of this Order, each attorney for one or more parties in any of the cases listed on Exhibit A, attached hereto, is directed to e-file a notice of appearance in the Asbestos Claims Court. In the notice of appearance, counsel must list the county and cause number of each case in which that counsel is appearing. In addition, counsel must provide a "lead party" name to be used by the Asbestos Claims Court for the entire set of cases in which that attorney represents a party—for example, "*Smith et al. v. W.R. Grace.*"

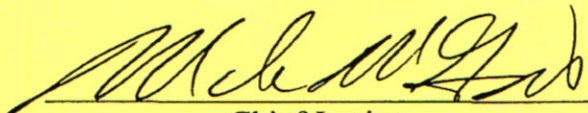
In addition, any attorney who represents a party in a case filed in a Montana district court involving an asbestos-related claim and not listed in Exhibit A is directed to file, within 30 days of the date of this Order, a notice of appearance in the Asbestos Claims Court. In the notice of appearance, counsel must list the county and cause number of the case in which that counsel is appearing. In addition, counsel must provide a "lead party" name to be used by the Asbestos Claims Court for the entire set of cases in which that attorney represents a party—for example, "*Smith et al. v. W.R. Grace.*"

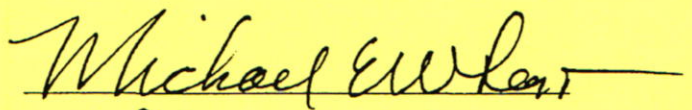

With the exception of the notices of appearances referenced above and service of process and filing of the pleadings identified in M. R. Civ. P. 7(a), all further action in the cases identified on Exhibit A, attached hereto, is STAYED pending further ruling by the Asbestos Claims Judge.

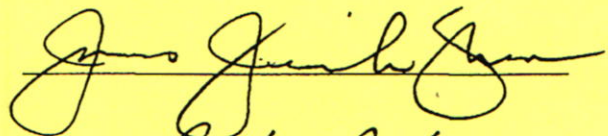
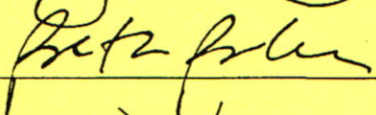
The Clerk of the Montana Supreme Court is directed to provide a copy of this Order and the attached Exhibit A to each attorney listed as counsel of record in any of the cases identified in Exhibit A. The Clerk is also directed to provide a copy of this Order to the Honorable Amy Eddy, to the Court Administrator's Office, to each District Judge for the

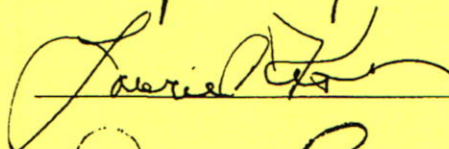
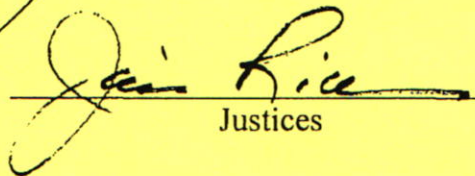
State of Montana, to each Clerk of District Court for the State of Montana, to the Montana Secretary of State, to the Code Commissioner, and to the State Bar of Montana with the request that this Order be published on the State Bar's website and distributed electronically to the Bar membership.

DATED this 28th day of November, 2017.


Chief Justice



Justices

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Montana Asbestos Court created to take on hundreds of unresolved cases

Seaborn Larson, slarson@greatfallsbtribune.com

Published 4:00 p.m. MT Nov. 28, 2017 | Updated 7:20 p.m. MT Nov. 28, 2017



(Photo: AP)

The Montana Supreme Court on Tuesday ordered a special claims court be activated for people who have contracted asbestos-related disease or died from asbestos exposure from a now-shuttered W.R. Grace mine in northwestern Montana.

This will be the first time the court has been activated since it was passed in an act by lawmakers in 2001. In the order, justices cited the need to resolve the claims in a timely fashion, considering the complexity of the cases as well as the "detrimental impact" to the district courts where litigation has been moving through an already overloaded system.

The cases listed in the Supreme Court's order — 548 individuals suing entities such as the state of Montana, BNSF Railway and a host of insurance companies for asbestos-related damages — are now effectively consolidated as they move into the claims court to be managed by one judge.

"I think it will allow for a fair and efficient management of these cases that involve particular challenges because of the nature of the disease," said Kalispell attorney Roger Sullivan, whose firm has represented about 2,000 individuals seeking financial compensation after being diagnosed with asbestos-related disease.

Because asbestos-related diseases are latent, developing in varying periods after exposure in various levels of severity, they naturally create the obstacle of prioritizing and re-organization of the cases as they fall in court, Sullivan said. The new court formation allows the presiding judge to make sweeping decisions in managing the litigation, rather than on an individual basis.

The asbestos claims court will be used only for pretrial purposes, however. If parties don't reach a settlement and require an individual case to go to trial, that case will then head back to the original court for further proceedings. If settlements can be reached in a large batch, if not all the cases, then victims with varying levels of severity in their disease will receive a claim based on a scale determined in the claims court.

"This is the only way for these parties, and the courts which are short on staff and money, to handle these cases from start to finish" considering the amount of time they take up on an individual basis, District Judge Elizabeth Best told the Tribune. For months, the number of asbestos-related claims cases have been mounting in Cascade County, which is largely unrelated to the source of the claims. Simply getting all the parties to the courtroom can be time consuming, Best said, while duplicating hearings when so many cases carry the same interests can waste precious resources in space and manpower.

In September, the Tribune reported on a handful of cases ([/story/news/crime/2017/09/18/montana-asbestos-wrgrace-libby-wrgrace-vermiculite-lawsuit-wrgracemine-mcgarvey/671515001/](http://story/news/crime/2017/09/18/montana-asbestos-wrgrace-libby-wrgrace-vermiculite-lawsuit-wrgracemine-mcgarvey/671515001/)) rising from the local district to federal court, where a magistrate judge would determine which court should handle the litigation. Those were part of a second group of cases moving into litigation, following a first wave that settled against multiple defendants, including the railroad company that transported the asbestos-laden ores for manufacturing centers, the local lumber mill that acted as a retain outlet for the processed material and even the state. In January, the Associated Press reported ([/story/news/2017/01/20/montana-asbestos-victims-get-million-state/96827982/](http://story/news/2017/01/20/montana-asbestos-victims-get-million-state/96827982/)) that the state settled with more than 1,000 victims of asbestos-related disease for \$25 million.

Sullivan said the asbestos claims court would have likely been activated earlier, but W.R. Grace filed for bankruptcy, effectively protecting itself from claims and litigation until it emerged in 2014. It took several years to sort out which additional entities involved, such as the lumber or railroad companies, were also liable for damages. Once W.R. Grace did emerge from bankruptcy, it established two compensation trusts worth more than \$4 billion.

The court appointed District Judge Amy Eddy of Kalispell to oversee pretrial proceedings and set trial management plans. The work will be done in Helena from the Supreme Court facilities.

Defendants include the state of Montana, BNSF Railway, International Paper Co., an insulation company and an insurance company.

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Health officials say asbestos-containing vermiculite and products made from it have killed hundreds of people and sickened thousands in the Libby area since the exposure problem surfaced in 1999.

- The Associated Press contributed to this story.

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